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IN THE

# Supreme Court of the United States

October Term, 1966

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No. 565

BARBARA L. HIATT,

*Petitioner,*

vs.

SAN FRANCISCO NATIONAL BANK, and FEDERAL DEPOSIT INSURANCE CORPORATION as Recevier of SAN FRANCISCO NATIONAL BANK,

*Respondents.*

## REPLY OF PETITIONER TO BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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WESTERN PRINTING COMPANY, WHITTIER—OXBOW 8-1722

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It ill befits Respondents' counsel to argue that Petitioner's counsel has made charges against national banks . . ."based upon assumptions, for which he goes outside the record." (Resp. Br., p. 12.) Respondents have declined to disclose the amounts involved in cases related to the one at bar; though such information is concededly not a part of the record, it is highly pertinent to this Court's determination as to whether this case presents a matter of public importance. To assist

this Court in its determination, Petitioner's counsel has obtained a copy of a letter, dated June 24, 1966, addressed to the creditors and stockholders of San Francisco National Bank, and signed by Melville B. Bennett, Liquidator, for the Federal Deposit Insurance Corporation, as Receiver of San Francisco National Bank.

The last paragraph on page 3 of that letter states:

> In this connection, the Receiver is involved in a large volume of litigation. As noted above, there are approximately 107 proceedings now pending against the bank's debtors for collection of loans. There are also numerous cases brought by creditors seeking priority over other creditors in distributions from the bank's estate; these are discussed below. In addition, causes of action have been asserted against the Receiver alleging that the bank engaged in fraudulent or illegal transactions in its dealings with its borrowers, depositors and others. *There are approximately 20 suits, defenses and counterclaims making these charges, involving millions of dollars.* Some borrowers make these charges to avoid liability on their notes, while other cases seek dollar damages from the estate of the bank. *These charges primarily concern sales of the bank's stock, alleged fraudulent misrepresentation made by the bank's management, and usury in connection with interest and loan fees. The U.S. Court of Appeals recently held for the Receiver that the usury allegations were not valid, and that decision will have a very*

*favorable effect on the Receiver's defenses to these many charges.* (Emphasis supplied.)

Respondents struggle admirably but in vain, with the naked conflict between *In re Wild,* 29 Fed. Cas. 1211, and the case at bar. First, they avoid arguing that there is no conflict, but recognize that there is a question. (Resp. Br., p. 9) Then, Respondents urge that *Wild* has no status as precedent since 1900, because of this Court's decision in *Daggs v. Phoenix National Bank,* 177 U.S. 549 (1900). But *Daggs* did not cite or discuss *Wild;* nor can *Daggs* be tortured into overruling *Wild.* Finally, Respondents devote a full page to citing and quoting *Penrose v. Canton National Bank,* 147 Maryland 200, 127 Atl. 852 (1925), a *state court decision.* (Resp. Br., pp. 9-10.) Respondents are driven to rely on a *state court decision* decided twenty-five years after *Daggs,* as their only authority in derogation of *Wild.*

Brevity being of cardinal importance in this reply, Petitioner abstains from refuting the many, important non sequiturs and fallacies replete throughout Respondents' brief, save but a few. Exemplary of Respondents' mistaken notions are the following. In ostensible refutation of one of Petitioner's arguments concerning interpretation of 12 U.S.C. §85, Respondents quote a portion of §85 (Resp. Br., p. 8), and attribute significance to the absence of discussion of the point in this Court's decision in *Daggs.* (Resp. Br., p. 9.)

*Daggs* was decided in 1900 by this Court; how could this Court have discussed the quoted portion of 12 U.S.C. §85, which was not enacted by the Congress until June 16, 1933?

Respondents assert that California law "allows" a national bank to charge any rate of interest. (Resp. Br., p. 6) Neither of the courts below enlisted this argument in their opinions. Clearly, Congress has preempted the field of interest rate limitations on national bank loans for more than one hundred years, and a state law cannot tell a national bank what rates it can charge.

Pervasive throughout Respondents' brief is voiced concern that national banks will be severely disadvantaged if this Court decides that 12 U.S.C. §85 forbids such banks to charge interest rates exceeding the greater of either 10% (the rate allowed by California law), or, 7% with interest in advance (pursuant to 12 U.S.C. §85). This apprehension is misguided because:

1) The *Wild* decision of the Second Circuit has been in effect for ninety-three years, yet national banks in New York thrive unhampered, and

2) The discount rate of 7%, in 12 U.S.C. §85, is a compound interest rate — stated in terms of simple interest, the rate allowed by 12 U.S.C. §85 is 13.61%.

Only by a decision of this Court can the patent conflict between the Second and Ninth Circuits on the issues stated be resolved.

Respectfully Submitted,

COLEMAN J. LESSER

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October 21, 1966.